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FEE TRANSMITTAL for FY 2003 <small>Patent fees are subject to annual revision.</small>		Complete if Known																																																																																																																																																																																			
<div style="border: 1px solid black; padding: 5px;"><input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27</div> <div style="border: 1px solid black; padding: 5px;">TOTAL AMOUNT OF PAYMENT (\$) 0.00</div>		Application Number	09/911,346-Conf. #4955																																																																																																																																																																																		
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		First Named Inventor	Jian Ni																																																																																																																																																																																		
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<div style="border: 1px solid black; padding: 5px;"><input type="checkbox"/> Check <input type="checkbox"/> Credit Card <input type="checkbox"/> Money Order <input type="checkbox"/> Other <input type="checkbox"/> None <input checked="" type="checkbox"/> Deposit Account Deposit Account Number: 08-3425 Deposit Account Name: Human Genome Sciences, Inc. The Commissioner is hereby authorized to: (check all that apply) <input type="checkbox"/> Charge fee(s) indicated below <input checked="" type="checkbox"/> Credit any overpayments <input checked="" type="checkbox"/> Charge any additional fee(s) during the pendency of this application <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.</div>		<div style="border: 1px solid black; padding: 5px;">3. ADDITIONAL FEES<table border="1" style="width: 100%; border-collapse: collapse;"><thead><tr><th colspan="2">Large Entity</th><th colspan="2">Small Entity</th><th rowspan="2">Fee Description</th><th rowspan="2">Fee Paid</th></tr><tr><th>Fee Code</th><th>Fee (\$)</th><th>Fee Code</th><th>Fee (\$)</th></tr></thead><tbody><tr><td>1051</td><td>130</td><td>2051</td><td>65</td><td>Surcharge - late filing fee or oath</td><td></td></tr><tr><td>1052</td><td>50</td><td>2052</td><td>25</td><td>Surcharge - late provisional filing fee or cover sheet</td><td></td></tr><tr><td>1053</td><td>130</td><td>1053</td><td>130</td><td>Non-English specification</td><td></td></tr><tr><td>1812</td><td>2,520</td><td>1812</td><td>2,520</td><td>For filing a request for <i>ex parte</i> reexamination</td><td></td></tr><tr><td>1804</td><td>920*</td><td>1804</td><td>920*</td><td>Requesting publication of SIR prior to Examiner action</td><td></td></tr><tr><td>1805</td><td>1,840*</td><td>1805</td><td>1,840*</td><td>Requesting publication of SIR after Examiner action</td><td></td></tr><tr><td>1251</td><td>110</td><td>2251</td><td>55</td><td>Extension for reply within first month</td><td></td></tr><tr><td>1252</td><td>400</td><td>2252</td><td>200</td><td>Extension for reply within second month</td><td></td></tr><tr><td>1253</td><td>920</td><td>2253</td><td>460</td><td>Extension for reply within third month</td><td></td></tr><tr><td>1254</td><td>1,440</td><td>2254</td><td>720</td><td>Extension for reply within fourth month</td><td></td></tr><tr><td>1255</td><td>1,960</td><td>2255</td><td>980</td><td>Extension for reply within fifth month</td><td></td></tr><tr><td>1401</td><td>320</td><td>2401</td><td>160</td><td>Notice of Appeal</td><td></td></tr><tr><td>1402</td><td>320</td><td>2402</td><td>160</td><td>Filing a brief in support of an appeal</td><td></td></tr><tr><td>1403</td><td>280</td><td>2403</td><td>140</td><td>Request for oral hearing</td><td></td></tr><tr><td>1451</td><td>1,510</td><td>1451</td><td>1,510</td><td>Petition to institute a public use proceeding</td><td></td></tr><tr><td>1452</td><td>110</td><td>2452</td><td>55</td><td>Petition to revive - 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Name (Print/Type)	Lin J. Hymel	Registration No. (Attorney/Agent)	45,414																																																																																																																																																																																		
Signature		Telephone	(301) 251-6015																																																																																																																																																																																		
		Date	December 18, 2002																																																																																																																																																																																		



VIA HAND DELIVERY DECEMBER 18, 2002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ni et al.

Docket No.: PF199D2

Application No.: 09/911,346

Group Art Unit: 1646

Filed: July 24, 2001

Examiner: P. Mertz

For: Natural Killer Cell Enhancing Factor C

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PROVISIONAL ELECTION UNDER 37 C.F.R. § 1.143
WITH TRAVERSE

Commissioner for Patents
Washington, DC 20231

Dear Sir:

In response to the Office Action dated November 18, 2002, please consider the following provisional election with traverse. Applicants submit concurrently herewith: (a) a Fee Transmittal Sheet; (b) Marked-Up Copy of the Specification.

Provisional Election With Traverse

The Examiner has separated the pending claims into three different groups and has required an election under 35 U.S.C. § 121. *See*, Paper No. 6, page 2-3.

In order to be fully responsive, Applicants hereby provisionally elect, *with traverse*, the claims currently restricted to Group I (*i.e.*, claims 1-20, 29-52, 61-83, 92-115, and 124-127 drawn to antibodies).

With respect to separation of the claimed invention into three (3) groups and the reasons stated therefore, Applicants respectfully traverse. It was asserted in the restriction requirement that Groups I, II, and III claims represent distinct inventions because "the antibody of invention I as claimed can be used in the process of immunochromatography, to purify the NKEF C protein." *See*, Paper No. 6, page 2. It was then concluded:

Having shown that these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classifications and recognized divergent subject matter as

defined by MPEP.. § 808.02, the Examiner has *prima facie* shown a serious burden of search (see MPEP..§ 803).”

Id. at 2-3.

Applicants respectfully submit, however, that it would not entail a serious burden to examine all pending claims together, because a search of the antibody claims can be expected to provide all necessary information for the method of detecting and method of treatment claims. In particular, any publication that describes use of the claimed antibody in a method of detection or treatment must necessarily describe the antibody that is used therein. Therefore, any publications that might potentially disclose the presently claimed antibody would also encompass all publications disclosing methods of using that antibody (whether it be for detection or treatment purposes).

Accordingly, Applicants respectfully request that the restriction requirement under 35 U.S.C § 121 be reconsidered and withdrawn and the instant claims be examined in one application.

Request for Rejoinder of Product and Method of use Claims:

Furthermore, if the restriction requirement is maintained, Applicants request rejoinder of the claims of Groups I, II and III once the claims of Group I are found allowable. In light of the decisions in *In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995) and *In re Brouwer*, 77 F.3d 422, 37 USPQ 2d 1663 (Fed. Cir. 1996), a notice was published in the Official Gazette which set forth new guidelines for the treatment of product and process claims. *See* 1184 OG 86 (March 26, 1996). Specifically, the notice states that:

in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim.

Id. Accordingly, if claims of Group I are found allowable, Applicants respectfully request that the claims of Groups II and III be rejoined and examined for patentability. *See* also M.P.E.P. § 821.04. Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.